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GENERAL COUNSEL  
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COPYRIGHT ARBITRATION ROYALTY PANEL

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PRE-HEARING CONFERENCE

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In the Matter of:  
Distribution of 1993, 1994,  
1995, 1996 and 1997 Cable  
Royalty Funds

Docket No. 2000-2  
CARP CD 93-97

Tuesday,  
October 17, 2000

The conference took place at 2:00 p.m., in  
Room 414 of the Library of Congress' Madison Building,  
101 Independence Avenue, S.E., Washington, D.C.  
20559.

BEFORE:

THE HONORABLE DOROTHY K. CAMPBELL, Chairperson

THE HONORABLE JOHN W. COOLEY

THE HONORABLE MARK J. DAVIS

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ORIGINAL

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Also Present:

GINA GIUFFREDA, Copyright Office  
BILL ROBERTS, Copyright Office

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P R O C E E D I N G S

2:05 P.M.

MR. ROBERTS: In an other time-honored tradition, since the Copyright Royalty Tribunal was eliminated and we started the CARP process here at the Copyright Office, I have had the honor of throwing out the first pitch. Actually, in some times past I actually did have a baseball to get everybody's signature on, but there was no money in the budget for this time to pay for a baseball to throw out. But I welcome everyone here today to start this proceeding for the 1997 Cable Royalties, a Phase II distribution proceeding and I'm pleased to present to you today our Arbitrators and I will start with our Chairperson, Dorothy Campbell from Nashville, Tennessee. To her immediate left is Mark Davis from New Orleans, Louisiana and over here is Jack Cooley from Chicago, Illinois. And rather than me do the introductions of the people, Arnie, I will start with you and you can just inform the Arbitrators who you are and who you represent.

MR. LUTZKER: Okay, I'm Arnie Lutzker. My

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1 law firm is Lutzker and Lutzker. People always ask  
2 who the other Lutzker is, my wife. And I represent  
3 the Independent Producers Group.

4 MR. TUCCI: My name is Michael Tucci with  
5 the law firm of Morrison & Hecker and I represent the  
6 Program Suppliers.

7 MR. OLANIRAN: I'm Greg Olaniran. I'm  
8 with Morrison & Hecker also. I represent Program  
9 Suppliers.

10 MR. POPHAM: I'm Jim Popham. I'm Vice  
11 President and Statutory License Counsel for the Motion  
12 Picture Association, also on behalf of the Program  
13 Suppliers. And with me just since the room is so  
14 small is my Legal Assistant Jo Popham, and yes,  
15 there's a connection.

16 (Laughter.)

17 MR. ROBERTS: As I think all of you are  
18 familiar the way the CARP process works is we at the  
19 Copyright Office and the Library up to this point in  
20 time have been the authority and in charge of  
21 marshalling this proceeding to this point and then we  
22 now turn it over officially to the Arbitrators.

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1 Today, marks Day 1 of the 180-day time period. The  
2 decision is due on or before the 16th of April of next  
3 year, the day after Tax Day which I guess since Tax  
4 Day falls on Sunday, it will be Tax Day on which this  
5 decision is due. Of course, all of you are familiar  
6 with rulings that we have issued up to this point in  
7 time. This morning, we held a short meeting with our  
8 Arbitrators in which we provided them with an  
9 orientation on this proceeding and have also provided  
10 them with materials, the direct cases, our rulings as  
11 well and have informed them of the issues that we have  
12 designated to this point in time and also have made  
13 them aware of the possibility of further motions that  
14 may be submitted to resolve some outstanding discovery  
15 related matters.

16 And I guess really at this point without  
17 further ado, I will turn it over to the Arbitrators  
18 today to discuss the schedule, so I hope all of you  
19 have brought your calendars.

20 While this proceeding is going on the only  
21 person from the Copyright Office who you will see  
22 coming in and out of the proceedings will be Gina

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1 Giuffreda who is in the back of the room and Gina will  
2 be the liaison for the Arbitrators, as well as for us  
3 at the Copyright Office. Neither Tanya nor I will  
4 attend any of the hearings or participate in any way  
5 whatsoever until the 180 days is done and we have a  
6 decision in our hands.

7 As Gina will probably point out to you, if  
8 you have any further submissions or there is materials  
9 that are going to be coming in to the Arbitrators,  
10 whether it be motions or documents that you are going  
11 to be filing or papers, you are to see Gina and file  
12 them with her. Please do not submit them to any of  
13 the Arbitrators or catch anybody in the hall and say  
14 here's an original and five or a particular  
15 proceeding. Everything should go through Gina and  
16 when you're outside of this hearing room if you need  
17 to contact the Arbitrators with any questions, whether  
18 they be procedural in nature or I guess to a certain  
19 limited extent substantive -- we don't want to  
20 obviously have any ex parte exchanges, but if you need  
21 to find out when a hearing is going to be or there's  
22 concerns about as we get into the winter time what the

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1 availability is going to be, you should contact Gina.  
2 Please do not make attempts to contact the Arbitrators  
3 directly.

4 Are there any questions before the baton  
5 is officially passed?

6 Very good. I wish all of you well and I  
7 hope everything goes well. I'm sure that our  
8 Arbitrators are going to do a just and fair job and I  
9 trust that all of you will present your evidence that  
10 will enable them to do that.

11 Good luck.

12 CHAIRPERSON CAMPBELL: Thank you. Well,  
13 we've had the opportunity to read the materials that  
14 you have filed. There have been several motions and  
15 orders on those motions and as you realize there are  
16 still some outstanding preliminary matters,  
17 particularly with regard to designated issues related  
18 to the status of the IPG's representation of its  
19 claimants; redaction or possible redaction of  
20 documents submitted under seal and then certain  
21 documents underlying the claim of each IPG claimant.  
22 We are aware that there might be able some other

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1 preliminary matters that could be filed shortly. If  
2 those additional motions are filed, those too will  
3 need to be handled prior to any hearings.

4 The threshold issue, of course, is the  
5 status of certain claimants. I don't know whether  
6 everyone has a calendar with them, but if you don't  
7 180 days sounds like a lot right now, or does when  
8 you're in elementary school and you're trying to  
9 figure out how long a semester is going to be, but we  
10 are talking about really quite a very short period,  
11 particularly because we do have some preliminary  
12 matters and we have holidays in the midst of that and  
13 then there's tax season. But one of the big issues  
14 for us is the fact that we want to give you a fair and  
15 equitable hearing process and we want to make sure  
16 that everyone is heard, but we also want to have  
17 sufficient time to evaluate the findings of fact and  
18 conclusions of law at the end so that the decision  
19 that is rendered will be fair, equitable and will  
20 respect the opportunity that everyone has had to share  
21 their thoughts about the situation and will be one  
22 that hopefully will be a satisfactory rendering for

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1 all parties involved.

2 Looking at the calendar, the three of us  
3 have talked about the fact that we're talking an end  
4 date of April 16. We would expect the end date for  
5 findings of fact and conclusions of law to be February  
6 15 that gives us time to evaluate the entire  
7 situation, including all hearings that have been  
8 conducted.

9 So do we have any additional issues that  
10 we need to take care of prior to that?

11 In our suggested schedule that was  
12 provided to us, we realize we have several items to  
13 cover. One is the resolution of the status of the  
14 claimants. That will have to be the first issue. Any  
15 additional discovery, any further pre-hearing requests  
16 and then hearings on written and direct cases. Then  
17 there will be a rebuttal matter, perhaps. Hearings on  
18 rebuttal cases, if necessary and then the proposed  
19 findings. So we're talking between now and February  
20 15, all of those items being handled.

21 Any comments?

22 It might be helpful if either party thinks

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1 that they're going to be filing any motions to just  
2 let -- you don't have to let us know that you  
3 absolutely are, but it might be helpful so we can sort  
4 of put that in the pile of trying to decide what we  
5 have to schedule, when and how.

6 MR. TUCCI: I'll go, if that's all right.  
7 On behalf of the Program Suppliers, we have -- we  
8 talked about this and actually we've had some talks  
9 between our camps with respect to a proposed schedule.  
10 I can honestly say that the proposed schedule did not  
11 result in findings being submitted on February 15th.  
12 It was more like March 19th which I understand is a  
13 very short period of time.

14 In working through that, we had discussed  
15 the issues that had to be decided prior to this thing  
16 moving forward to a hearing and I can tell you from  
17 our standpoint what those issues are and what we view  
18 as a potential timing for the decision on those  
19 issues.

20 And in looking at this and in discussing  
21 it, we realize that there's only five hearing days  
22 between, I think the week before Thanksgiving and the

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1 week after New Year's. It only has five hearing days  
2 in it, so that's a pretty large block of time without  
3 very many dates in it.

4 The way we had envisioned it was the  
5 pre-hearing material being decided prior to the  
6 holidays and then going into the hearing directly  
7 after the holidays. If that doesn't work, it doesn't  
8 work. We'll work something else out, obviously. But  
9 from our standpoint, the issues that need to be  
10 decided are number one, the representation agreements.  
11 We have not been afforded an opportunity to review  
12 unredacted representation agreements.

13 I don't want to say anything that you all  
14 already know, but just as a way of a little bit of  
15 background, we filed, the Program Suppliers filed a  
16 motion to dismiss in May of this past year. The  
17 Copyright Office ruled on that in June of this year,  
18 designating it to the CARP for ultimate determination.  
19 What became extremely important by way of that ruling  
20 was the status of the parties and the status of the  
21 parties as evidenced by the representation of  
22 agreements. We had asked for in discovery copies of

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1 the representation agreements and were afforded copies  
2 but they were in a heavily redacted form. Separately  
3 from our motion to dismiss, we filed a motion for  
4 basically unredacted copies of the agreements.

5 Now the Copyright Office didn't rule on  
6 that because of the representation status issue being  
7 put on the CARP. It also put on the panel the issue  
8 of what portions of the redactions were appropriate  
9 and what portions were not appropriate. In the  
10 interim, there has been a general protective order  
11 entered in this case. So I'm not sure that a  
12 confidentiality issue currently exists, but it may.  
13 but in any event, we obviously need to see, in our  
14 view, copies of the underlying documents to the  
15 factual assertion of representation.

16 Secondly, there was a series of telephone  
17 calls and conference calls with the Copyright Office  
18 related to this issue which resulted in a filing, I  
19 think it was last week, right, on October 10th of  
20 additional material which we understand IPG is relying  
21 on to supplement the material already in the record  
22 with respect to representation. We have never seen

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1 that.

2 We don't have a motion pending. We could  
3 certainly make an oral motion right now to be afforded  
4 the opportunity to see those documents. Once we get  
5 a hold of those documents which we believe we're  
6 entitled to, we also believe that there should be an  
7 opportunity to do additional discovery, some follow up  
8 discovery requests based on whatever those documents  
9 contain which again were information deficient at the  
10 present time.

11 That process is going to take probably a  
12 couple of weeks. And I don't see how it can be  
13 shortened. If you all are ready to rule today on the  
14 issue of the confidentiality and the redaction that  
15 obviously would speed things up. Otherwise, I can  
16 just tell you what the dates that we proposed and I  
17 don't know that we're in agreement with these, but  
18 we've had a general discussion with respect to  
19 starting, I think, on January 8th, that I understood  
20 was an agreeable date for starting the actual formal  
21 hearings.

22 MR. LUTZKER: Maybe before we get into the

1        dates, depending upon -- the dates are one issue and  
2        so what are the issues and that sort of impacts on  
3        dates. I think we are in agreement that given the  
4        schedule that was sort of laid out in the announcement  
5        of the CARP and the unavailable dates of the CARP that  
6        the notion of handling any additional motions and  
7        there are some that obviously Programs' parties have  
8        that IPG has issues as well, that the schedule between  
9        now and the dates that will be available essentially  
10       for the balance of this month, November and December,  
11       would really afford an opportunity to get all these  
12       other issues resolved and then to start a hearing sort  
13       of in the first full week in January and I think we're  
14       in agreement on that, as a practical thing although we  
15       were not anticipating if it were the 15th date and  
16       obviously that factors in. I think just briefly, in  
17       sort of complementing or sort of adding to sort of the  
18       background which I'm sure you have some background on  
19       this, the IPG provided what we called redacted copies  
20       of the contracts to the Program Suppliers. Issues  
21       were raised about the redactions. This was also done  
22       in the point without any agreement in place. This was

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1 done, not by IPG not withholding any material, but  
2 providing material less information in the contracts  
3 which it deems as confidential, specifically  
4 commission and financial information dealing with his  
5 clients was not an issue in this proceeding. And then  
6 separately matters that relate to matters unrelated to  
7 U.S. CARPs.

8 As I understood the Copyright Office's  
9 ruling, it was in your hand to make a decision as to  
10 whether or not any documents beyond the redacted  
11 material that was already provided and I'll add that  
12 one issue that had come up which we did address  
13 separately in discovery was the signatures that were  
14 perhaps unclear because of the way people scrawled  
15 their names, who signed it and sort of where -- that  
16 information was already provided so really the issue  
17 on redacting again may be something that if you've had  
18 a chance to review the material it may or may not be  
19 a discovery issue. If it is a discovery issue, there  
20 may be additional sort of either motions or discussion  
21 about that, but it may not be an issue because you may  
22 make a judgment that the redactions were made and the

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1 material has nothing to do with this proceeding. And  
2 even though they might desire to see the material, it  
3 really doesn't have relevance. I mean we have entered  
4 into the confidentiality agreement as was noted,  
5 subsequent to this in light of the inability of IPG to  
6 get any information that was deemed confidential  
7 without the agreement and we ultimately entered into  
8 an executed confidential agreement.

9 That agreement has been the basis upon the  
10 Program Suppliers providing certain documents under  
11 the strictest of conditions and as I've alerted Greg,  
12 we have some issue as to whether or not this  
13 information is truly confidential or whether some of  
14 that material can otherwise be made available on less  
15 than a strictly confidential basis. In part, we're  
16 dealing in a situation with a small claimant, if you  
17 will, on the one hand, who is trying to cope with the  
18 costs of the legal proceeding and sort of dealing with  
19 whatever he has to deal with and having the ability to  
20 work with the materials themselves, saves him both  
21 time and effort, plus he has expertise that I  
22 personally don't have with regard to some of this

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1 material and it's a significant cost savings factor  
2 for a small claimant. So we'll raise these issues and  
3 that would be something that's not -- I don't remember  
4 if the paperwork is sort of -- the paperwork to date  
5 would not have fully described these issues, but we  
6 will lay them out and the Copyright Office gave us  
7 seven days from the initiation of the CARP to do that  
8 which would be next Tuesday and we would prepare and  
9 file something to explain our position on that.

10 MR. TUCCI: I didn't mean to want to get  
11 into any sort of argument on the bona fides. I don't  
12 think that that's probably what we -- what you're  
13 looking for and correct me if I'm wrong, but I'm happy  
14 to do that, but I'm just trying to lay out the issues.  
15 As we see them, the need to go forward prior to --  
16 need to be decided prior to going forward with the  
17 hearing schedule. The other thing is once the  
18 documents that we feel we're entitled to have been  
19 received and reviewed and we do our follow-up  
20 discovery request, we are going to be filing a renewed  
21 motion to dismiss which is not going to look exactly  
22 like the first motion to dismiss because we've had the

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1 Copyright Office rulings in the interim and they've  
2 shifted the focus to some degree on different matters.  
3 So it's not a situation where the motion that was  
4 designated to you for decision, I think, can just be  
5 decided the way it is. A lot of it hinges on what  
6 these documents say and their relevance to the  
7 inquiry.

8 I don't know whether it would be helpful.  
9 We printed out a proposed schedule. We printed enough  
10 copies for everybody to have it. I don't know if you  
11 want it.

12 CHAIRPERSON CAMPBELL: Is this a joint  
13 proposed scheduled? Quasi-joint proposal?

14 MR. LUTZKER: Quasi. Greg and I had  
15 conversation yesterday. I'd say it's sort of -- the  
16 big issues were probably pretty close on. There were  
17 some dates in between, sort of -- that might need to  
18 be tweaked based on my schedule, my client's schedule,  
19 sort of the order of witnesses. But I'd say --

20 CHAIRPERSON CAMPBELL: In a general time  
21 frame.

22 MR. LUTZKER: In a general sense, yes. I

1 think -- I don't have any problem adding --  
2 complementing whatever he wants to circulate.

3 MR. TUCCI: And obviously the dates that  
4 are on here are not etched in stone. We just put this  
5 together to try and move this forward --

6 CHAIRPERSON CAMPBELL: To get started.  
7 Very good.

8 (Copies of proposed scheduled  
9 distributed.)

10 MR. TUCCI: We have cut this to a bare  
11 minimum. We have the rebuttal case being filed two  
12 weeks after the end of the direct case which is a very  
13 tight time frame.

14 We have the proposed findings and the  
15 brief two weeks after the end of -- let's see -- yeah,  
16 two weeks after the end of rebuttal.

17 I don't know that we can go any faster  
18 than that. But the benefit is there are only two  
19 parties in this case and the issues are, I think,  
20 fairly narrow and depending on the outcome of the  
21 Program Suppliers' renewed Motion to Dismiss, they  
22 could be narrowed even further than they are today.

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1 But obviously, we want to give the Panel  
2 the adequate opportunity to digest the information and  
3 the briefs and the proposed findings in the matter and  
4 render its decision.

5 MR. LUTZKER: And I would say that sort of  
6 where I would have sort of recommendations on this, we  
7 now have sort of October 24th as a date that IPG would  
8 have to file its request for guarding the Protective  
9 Order. I think that the November 20th which they  
10 characterize as the Motions to Dismiss is really sort  
11 of any final motions. Ours may be characterized as  
12 Motions to Strike rather than Motions to Dismiss. And  
13 in deference to the fact that that is -- and I think  
14 there are advantages to filing the motions prior to  
15 Thanksgiving. The oppositions which are in our view  
16 important documents, in this particular proceeding,  
17 they have scheduled it so that there's a 7-day period,  
18 but it doesn't take into account Thanksgiving. I  
19 would recommend -- and December 1 is a Wednesday. I  
20 recommend doing it on a Friday to take -- because I  
21 know that --

22 MR. TUCCI: We actually moved that to the

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1 Friday.

2 MR. LUTZKER: Oh, December 1 is the  
3 Friday, okay.

4 MR. TUCCI: Based on the discussion, yes.

5 MR. LUTZKER: Okay, great, then I'm in  
6 agreement with that. I was working with the earlier  
7 --

8 MR. TUCCI: No, we understood your point  
9 and that gives you two full weeks basically to  
10 respond.

11 MR. LUTZKER: Yeah, I think that's -- and  
12 you get two full weeks, right. I think we're trying  
13 to do this in -- and I think we're looking, frankly,  
14 also at the CARP dates that were sort of the  
15 unavailable -- there's a substantial block of December  
16 where the CARP is unavailable and we figured if we can  
17 get these motions out of the way, because the  
18 discovery is not -- is either done or will generate  
19 motions based -- and so we figure we've got to get  
20 that material to you. Your actions on those will then  
21 perhaps further narrow the case or at least define the  
22 case and give us -- we have resolution of that before

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1 the end of the month of December. We're then in a  
2 situation to sort of know about the hearing. I'll get  
3 to the hearing, but in other words, that was our, I  
4 think our mutual reaction to the schedule and your  
5 availability was that rather than trying -- we didn't  
6 see really a feasible way of resolving these issues  
7 and squeezing in actual hearing dates before the first  
8 week in January.

9 MR. TUCCI: Right, and it didn't make any  
10 sense to have a couple of hearing dates if the hearing  
11 wasn't going to be completed until after the holidays  
12 anyway, because you just gain a couple of days.  
13 There's not much point in doing it that way.

14 The other thing that I'd mention about the  
15 Motions to Dismiss period, there are two days in the  
16 middle of December that you all are available. I  
17 think it's the 8th and the 11th which is a Friday and  
18 a Monday. I would propose that the 11th be used as a  
19 date for oral argument --

20 MR. LUTZKER: If necessary.

21 MR. TUCCI: If necessary. We wouldn't  
22 propose to schedule an argument, but if you all

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1 desired argument on any issue in the Motions to  
2 Strike, Motions to Dismiss, we would propose that as  
3 a date to do it.

4 JUDGE COOLEY: Which date again? 11th?

5 MR. LUTZKER: The 11th. December. That  
6 was one of your available dates.

7 (Pause.)

8 MR. TUCCI: Other than doing that  
9 preliminary Motion to Dismiss period prior to the  
10 initiation of the hearing, the hearing follows, like  
11 I said, earlier a very tight schedule of two weeks for  
12 rebuttal, a truncated discovery schedule where all  
13 motions regarding discovery are heard quickly and I  
14 think on the same day. I think we simultaneously do  
15 motions, in an effort to speed it up and give you as  
16 much time as possible.

17 We're doing document productions in one  
18 and two day turnaround. And of course, there's no  
19 guarantee that the issues for rebuttal will be  
20 substantial. We obviously don't know what they will  
21 be right now. We have a fairly good idea because  
22 we've had the direct cases for a fair amount of time,

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1 but nothing is certain until the hearing occurs.

2 CHAIRPERSON CAMPBELL: How about this, why  
3 don't the parties take about a ten minute break? You  
4 can stay here and we can go in there. That will give  
5 us a chance to look at this, digest a little of it and  
6 we'll be back in about 10 minutes.

7 Thank you.

8 (Off the record.)

9 CHAIRPERSON CAMPBELL: That's the longest  
10 ten-minute break ever, but we needed the time to  
11 really take a look at the schedules and set some  
12 priorities and examine what your priorities were and  
13 Jack Cooley has been our scribe and has offered to run  
14 through a proposed revised calendar, taking your  
15 calendar and some realities and trying to find a good  
16 way to meet everybody's needs.

17 JUDGE COOLEY: I'm the designated  
18 negotiator on this, ladies and gentlemen. Here is our  
19 concern, we need at the very minimum 30 days to have  
20 this under advisement and that -- we would like to  
21 have more. We understand that you need the time and  
22 the case needs the time and parties need the time and

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1 so forth, but we need that as a minimum and so we set  
2 that as our limitation.

3 And we want to say this, let's just take  
4 -- the only change that we have to your proposed  
5 schedule, and thank you by the way for coming up with  
6 this, is and we've already talked about it before.  
7 December 11th, we're going to kind of pencil in a  
8 possible argument on motions, I believe. So we all  
9 agree on that. That's no problem.

10 We took then a look at the month of  
11 February. Up to February 5th on the schedule  
12 everything is intact. That's what we propose. And  
13 what we saw when we looked at the month of February  
14 was really a discovery month. We want to shorten that  
15 discovery period a lot, but not to the detriment of  
16 the parties. What we would like to do is accelerate  
17 the process and we're suggesting this. February 5th,  
18 complete the document production. And by that time I  
19 think that you will know, hopefully, what your follow-  
20 up discovery requests are going to be. In order to  
21 shorten this period, we would like to do a lot of this  
22 orally. And we are proposing this. We looked at the

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1 schedule. We have, on our schedules anyway, February  
2 6th and 7th are open. What we are proposing is that  
3 each side or party, come in with their requests for  
4 document requests that you have. If you need time  
5 that day, even to look at them or if you can get them  
6 even to each other the proceeding day, that we come in  
7 and discuss those. And you can determine what you  
8 need, what you don't have, what you're looking for.  
9 I would assume that by this time and this case you  
10 folks should have a pretty good idea of what, whether  
11 or not you're willing to produce those or what. What  
12 we'd like to do then is set those two days aside to  
13 work out all the discovery problems. We think that  
14 there may not be a lot of documents coming out of  
15 this. We think that there might be just a few issues.  
16 We might even be able to resolve some on your own.  
17 And we would then rule, if not on the 7th, very  
18 shortly after that. You'd have all the rulings.  
19 You'd know exactly what we think you should produce,  
20 each side. And we would then eliminate a lot of the  
21 briefing that's going on here, okay?

22 That brings us down to -- well, we say --

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1 oh, brings us down to February -- what we'd like to do  
2 is have the rebuttal hearing, if we rule shortly,  
3 either on the 7th or the 8th or 9th on this, we'd like  
4 to have the rebuttal hearings on February 20th and  
5 21st.

6 MR. TUCCI: Before we move off that, can  
7 I ask a question, please?

8 JUDGE COOLEY: Sure.

9 MR. TUCCI: The procedure that you're  
10 envisioning is that we discuss with one another the  
11 follow-up requests on the 6th, is that right?

12 JUDGE COOLEY: Yes, I think that you're  
13 going to need that time, maybe that morning or  
14 something.

15 MR. TUCCI: Okay. And then we come to you  
16 on the 7th with any disagreements that we have?

17 MR. LUTZKER: Or the 6th.

18 MR. TUCCI: Or the 6th.

19 JUDGE COOLEY: We could be here both days  
20 so that some things you might be able to bring to us  
21 or want to bring to us right away. We will be here to  
22 hear your motion, essentially. The rulings will be in

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1 writing.

2 MR. LUTZKER: In other words, it will be  
3 orally presented and then ruling --

4 JUDGE COOLEY: The ruling would either be  
5 on the 7th or 8th or 9th, whenever we can write it up.  
6 We don't know what's going to be. It might take some  
7 thought and some reasoning.

8 MR. TUCCI: And then the documents would  
9 be immediately producible at the time of the ruling.

10 JUDGE COOLEY: That's our thought. And so  
11 those rulings would be hopefully out by the latest the  
12 9th, February 9th. We would have rebuttal hearings on  
13 February 20th and 21st. We are suggesting March 2nd  
14 as the date for filing proposed findings of fact and  
15 conclusions of law. One week later, March 9th, for  
16 reply, proposed findings of fact, conclusions of law.  
17 We are setting closing arguments on March 16th. We  
18 think that these will be needed and helpful to us.  
19 And if we don't think we need them, we'll let you  
20 know, but I think that you can plan on that as  
21 probably a firm date. And then our decision is due on  
22 April 16th.

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1 MR. TUCCI: I have one -- you would have  
2 the argument on the 16th?

3 JUDGE COOLEY: That's what we're  
4 proposing. If that's not a good date.

5 (Pause.)

6 MR. TUCCI: It's more like a personal  
7 thing in terms of being out. There's a likelihood of  
8 sort of with school schedules and things, that's like  
9 a travel week.

10 CHAIRPERSON CAMPBELL: Spring week.

11 MR. TUCCI: From what I understand.

12 CHAIRPERSON CAMPBELL: I would urge  
13 everyone to get their reservations for the rebuttal  
14 hearings in February because that would mean you would  
15 fly in on the 19th which is Washington's Birthday,  
16 holiday, whatever they call that, President's Day, but  
17 it probably is a big travel day for certain people.

18 MR. LUTZKER: I don't know if you have  
19 flexibility on sort of between the 16th and the next  
20 available CARP day which I guess is the 22nd.

21 You would envision only one day for oral?

22 JUDGE COOLEY: I think we're going to need

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1 a month. It's not only drafting it up. It's also  
2 collaborating and making sure that we all agree on all  
3 aspects of the decision too which takes time.

4 CHAIRPERSON CAMPBELL: And we want to give  
5 it our full and fair attention. I think it would be  
6 remiss not to do that. It wouldn't be fair to either  
7 party or to the process and because of that, we do  
8 need to at least have that month period, that 30-day  
9 period.

10 MR. TUCCI: It's fine with us. I don't  
11 think we have a problem with compressing the discovery  
12 schedule.

13 JUDGE COOLEY: Shall we leave it for the  
14 March 16th as the --

15 MR. LUTZKER: Yes.

16 JUDGE COOLEY: And if there is a problem  
17 we can talk about it between now and then. Who knows,  
18 maybe --

19 CHAIRPERSON CAMPBELL: Because schedules  
20 may shift.

21 JUDGE COOLEY: Our schedules may change.  
22 Madam Chair, I'm finished.

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1 CHAIRPERSON CAMPBELL: You're finished,  
2 okay. So everybody is clear on that?

3 One other item we talked about briefly  
4 before the documents that were filed on October 10th  
5 and they were filed by IPG, confidential documents.  
6 Although there was a motion that spoke to them, we  
7 would need a formal motion to add those in if that's  
8 what you wanted to request, just so that we have the  
9 paper on file.

10 MR. TUCCI: We'll file it.

11 CHAIRPERSON CAMPBELL: We appreciate your  
12 willingness to shorten the discovery. We don't want  
13 this to be the detriment of either party or anybody in  
14 the room, but we think that with that expedited  
15 schedule will provide the Panel to truly examine all  
16 of the issues, be able to weigh all of the evidence  
17 and have a fair and impartial response and that's why  
18 we're here.

19 Does anyone have any other business?

20 MR. TUCCI: Just a procedural matter.  
21 Should we re-do the schedule and provide it to Gina,  
22 the way that you all would want us to proceed?

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1 JUDGE COOLEY: I think that would be very  
2 useful.

3 MS. GIUFFREDA: Usually, the Panel issues  
4 an order setting the schedule out.

5 CHAIRPERSON CAMPBELL: But it wouldn't  
6 hurt to have you so that we all know we're on the same  
7 sheet.

8 If there was a question, we could make  
9 that clear.

10 MR. LUTZKER: We can circulate that --

11 MR. TUCCI: We'll do that int he next few  
12 days if that's sufficient.

13 CHAIRPERSON CAMPBELL: Anything else?

14 MR. OLANIRAN: The daily schedule. What  
15 time periods we're going to run through, when we start  
16 and when we end, when we take a break.

17 MR. TUCCI: We have in this proceeding in  
18 the past decided what the start time is, the break  
19 times, the lunch period, the end times, things like  
20 that. We're prepared to discuss it now. We're  
21 prepared to discuss it right before the hearing,  
22 whatever is your preference.

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1 CHAIRPERSON CAMPBELL: Why don't you give  
2 us feedback right now? I think that would be helpful  
3 to us to hear what might be more feasible for both  
4 parties.

5 MR. TUCCI: What had been done in the  
6 prior proceedings was a start time of 9:30, going to  
7 12:30, a one hour lunch and ending at 4:30 with two  
8 10-minute breaks in each 3-hour block. Two breaks in  
9 the morning, two breaks in the afternoon.

10 That is fine with us. We're certainly  
11 flexible to the extent that it looks like we're coming  
12 up on -- to the extent that it looks the hearing is  
13 taking longer than perhaps we thought it would for a  
14 particular witness. We're certainly flexible and  
15 we'll stay longer.

16 MR. LUTZKER: Yes, I mean, I think also  
17 based on witness sort of travel and scheduling it may  
18 be necessary to run somewhat longer.

19 CHAIRPERSON CAMPBELL: In order to get  
20 them off so they don't have to --

21 MR. TUCCI: So they don't have to stay  
22 until the next day.

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1 CHAIRPERSON CAMPBELL: That makes absolute  
2 sense to me. Any objection to that?

3 JUDGE COOLEY: I don't know if this ever  
4 comes up and I don't know if I should raise it, once  
5 in a while we have a situation where we have to go  
6 over or think we have to go over to Saturday and I was  
7 just wondering and I don't even know if any of our --  
8 we have one week, I think, one full week of hearing in  
9 January. I guess my basic question is is there any --  
10 I mean is this building and room open on Saturday?

11 MS. GIUFFREDA: The building always is  
12 open. You have to let me know so we can get special  
13 permission.

14 JUDGE COOLEY: We hope that doesn't  
15 happen.

16 MR. LUTZKER: One of the things that we  
17 were going to suggest which is sort of raised by that  
18 in looking at sort of -- I think initiation of the  
19 hearing, we were going to suggest IPG's Raul Galaz  
20 comes from Texas and he will be traveling. If he were  
21 the initial witness in the beginning of the week and  
22 Ms. Kessler who is local, from our point of view I

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1 think a week -- we anticipate a week would  
2 accommodate. We haven't really talked through this,  
3 but the likelihood the week is there, but it gives  
4 additional flexibility if Mr. Galaz is first and I  
5 know NPA has sort of a preference that they initiate  
6 the proceeding. From a scheduling point of view, his  
7 personal schedule and other commitments make it more  
8 desirable that he sort of not go into a later week,  
9 but I know that you do have Monday which will be the  
10 15th of January.

11 CHAIRPERSON CAMPBELL: Will it open on a  
12 national holiday?

13 MS. GIUFFREDA: No.

14 MR. LUTZKER: Or the 16th, I guess --

15 CHAIRPERSON CAMPBELL: Martin Luther King  
16 Day.

17 MR. LUTZKER: It will be closed --  
18 whatever the holiday is, but there would be additional  
19 time during the following week, if it had to run over,  
20 so we could sort of keep the continuity of the  
21 schedule.

22 MR. TUCCI: On that point, we would prefer

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1 that our witness go first. It has been -- in the  
2 past, the proceeding has proceeded with the largest  
3 claimant first, the broadest claim first. I think  
4 that that's appropriate in this case. It gives the  
5 panel I think the broad background knowledge with  
6 respect to the claim rather than a smaller, more  
7 limited claimant with a more limited perspective and  
8 I think it just makes sense to go in that broad to  
9 narrow approach as opposed to narrow to broad.

10 We are -- that being said, we are  
11 perfectly willing to accommodate Mr. Galaz' schedule  
12 in any way that we can and set a certain start time  
13 for him and those sorts of matters.

14 We can say that he is going to start on  
15 Thursday at 9:30, January 11th.

16 JUDGE COOLEY: If that's convenient --

17 MR. LUTZKER: Well, again, I think that  
18 the -- a critical thing we need to deal with is just  
19 the availability of the dates, to make sure that we  
20 have the hearing accommodated within the date periods,  
21 the idea of sort of having continuity with witnesses  
22 is also pretty critical, I think, in terms of just the

1 comprehensiveness of understanding what's going on.

2 JUDGE COOLEY: While we're on that topic,  
3 have we really been informed as to how long the  
4 Program Suppliers' case is proposed to be, its direct  
5 case?

6 MR. TUCCI: We have thought that it would  
7 take two full days, maybe two and a half. So that's  
8 why I was suggesting that we set Mr. Galaz for  
9 Thursday, the 11th because that gives us obviously  
10 enough time to do the opening argument and the direct  
11 case, as well as that was what we're assuming would be  
12 the total time for direct and cross examination, I'm  
13 sorry. The direct case, I think you're probably  
14 talking four to six hours, something like that,  
15 testimony and obviously, it's up to you to determine  
16 how long you would be cross examining.

17 MR. LUTZKER: Well, I think the idea of  
18 the full week is reasonable. It could extend beyond  
19 that. Obviously, there are discovery issues. There  
20 are additional motions that would be relevant to the  
21 nature of the case that have to be resolved. So the  
22 full breadth of the case, it would take longer.

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1           As I said, I think we should be able to  
2           accomplish this within a week, based on the cases that  
3           have been filed.

4           CHAIRPERSON CAMPBELL: I think that if we  
5           get into that, if we feel we need a few extra hours,  
6           we can certainly go further than 4:30 and that might  
7           accommodate everyone without asking to come back the  
8           next week and incurring the expense, cost, time,  
9           everything else that's involved in re-entering that  
10          process. It's more difficult, I think, for the  
11          witnesses to take the weekend break and come back than  
12          anybody else and they need to have a fair opportunity  
13          to be heard at their best, if you will.

14          So I think we should look at that week,  
15          due to the fact that we have a very finite time  
16          schedule, try to accomplish what we need to do in that  
17          week, if we need to extend an hour or so in the  
18          afternoon on any of those days, if we would all  
19          accommodate that to our schedules and try to keep on  
20          track. I think the expedited process would be  
21          accomplished, but I think it would also be in the best  
22          interest of the parties and again those witnesses who

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1 have to be in the hot seat during that time.

2 Is that --

3 JUDGE DAVIS: How late is the building  
4 open?

5 CHAIRPERSON CAMPBELL: We can have the  
6 building extended somewhat, can't we, in the  
7 afternoon?

8 MS. GIUFFREDA: Just let me know, so I can  
9 let them know downstairs. They come around to close  
10 up and if they don't know that you're supposed to be  
11 they'll kick you out. If they know you're going to be  
12 here --

13 CHAIRPERSON CAMPBELL: We can do that.  
14 Anything else then? I think we've accomplished what  
15 we need to accomplish.

16 Thank you all for appearing today and we  
17 look forward to working with you over the next several  
18 months.

19 We are adjourned until the next gathering.

20 (Whereupon, at 3:29 p.m., the proceedings  
21 were concluded.)

22



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